IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5678 of 1996

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

K H PANDE

Versus

SHAH JAGRUTIBEN NATWARLAL

Appearance:

1. Special Civil Application No. 5678 of 1996

MR NR TANDEL for Petitioner No. 1

NOTICE SERVED for Respondent No. 1-4

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 09/07/2004

ORAL JUDGEMENT

1.1 The petitioner herein has challenged the order of the Gujarat Secondary Education Tribunal (for short, "the

Tribunal") dated 24/04/96 in Application No.323/1995, whereby, ad-interim relief in terms of para 7(3) which was granted earlier was confirmed. The aforesaid order of the Tribunal was stayed by this Court (Coram : Ms. R.M.Doshit, J.) by order dated 18/06/97.

2.1 The brief facts of the case are that the petitioner is the Managing Trustee of the Educational Trust created by the members of the minority. The said Trust started primary education in 1991 and secondary education in 1994. But, on account of non-availability of finance and insufficient number of students, the secondary school came to be closed.

2.2 It is the case of the petitioner that an Assistant Teacher who happened to be the in-charge Principal of the school, respondent no.1 herein, had tendered her resignation willingly and had approached the Tribunal by way of application being Application No.323/1995 on the ground that her resignation was obtained under duress. The petitioner preferred M.C.A. before the Tribunal, narrating the facts with regard to the closure of the school and non-availability of grants.

2.3 The petitioner raised preliminary contentions that the Tribunal had no jurisdiction because the registration of the school was already treated as de-registered, and therefore, the application being Application No.323/1995 which was preferred by respondent no.1 herein, was not maintainable under Section 38 of the Gujarat Secondary Education Act, 1972.

3.1 Mr.N R Tandel learned advocate for the petitioner has submitted that once a resignation letter is tendered willfully, then the relationship of master and servant ceases to exists. Under these circumstances, the Tribunal will have no jurisdiction to issue an interim relief pending the original application. In the result, it has to be accepted that the resignation of respondent no.1 herein was formally accepted, and therefore, this petition is required to be allowed. Moreover, the order of the Tribunal is also an interlocutory order. Therefore, the order of the Tribunal is required to be quashed and set aside.

4.1 I have gone through the averments made in the petition and the documents produced on record. Now, since the resignation of respondent no.1 has been accepted by the Tribunal in its final order, she cannot be granted any salary, as directed by the Tribunal. Therefore, no order is required to be implemented by the

petitioner with respect to the payment of salary. In that view of the matter, the order of the Tribunal is required to be quashed and set aside.

5.1 For the foregoing reasons, this petition is allowed. The order of the Tribunal dated 24/04/96 in Application No.323/1995, confirming ad-interim relief in terms of para 7(3), is quashed and set aside. Rule is made absolute accordingly with no orders as to costs.

(K. S. Jhaveri, J.)

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